

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

Nov 3 10 44 AM '99

In the Matter of)	
DISPATCHED BY)	CC Docket No. 99-323
GTE Telephone Operating Companies)	
Transmittal Nos. 1225 and 1226)	Transmittal Nos. 1225, 1226
FCC Tariff Nos. 1 and 2)	
)	
GTE System Telephone Companies)	
Transmittal No 296)	
FCC Tariff No.1)	

Suspension Order

Adopted: October 29, 1999

Released: October 29, 1999

By the Chief, Competitive Pricing Division, Common Carrier Bureau:

1. On July 30, 1999, a three-judge panel of the United States Court of Appeals for the Fifth Circuit issued a decision¹ affirming in part, remanding in part, and reversing in part the Commission's May 8, 1997 *Universal Service Order*.² Several of the court's rulings in that decision affect the assessment and recovery of universal service contributions, as well as the Commission's Lifeline program for low-income consumers. On September 9, 1999, the Commission filed a motion to stay the court's mandate, which had been scheduled to take effect on September 20, 1999.³ On September 10, 1999, the Commission released proposed fourth quarter 1999 contribution factors, which the Universal Service Administrative Company (USAC) used to bill contributors for their October 1999 contributions.⁴ Consistent with the Commission's rules in effect on that date, one of these contribution factors was calculated based on contributors' intrastate, interstate, and international end-user telecommunications revenues for the July 1998 through December 1998 period, as reported by contributors on the March 1999 Universal Service Worksheet (FCC Form 457). On

¹ Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393 (5th Cir. 1999).

² Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997), as corrected by Federal-State Joint Board on Universal Service, CC Docket 96-45, Erratum, FCC 97-157 (rel. June 4, 1997), *aff'd in part, rev'd in part, remanded in part sub nom.* Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393 (5th Cir. 1999), motion for stay *granted in part*, (Sept. 28, 1999), petitions for rehearing and rehearing en banc *denied*, (Sept. 28, 1999) (*Universal Service Order*).

³ FCC Petition for Panel Rehearing (filed Sept. 13, 1999); FCC Petition for Rehearing En Banc (filed Sept. 13, 1999).

⁴ Proposed Fourth Quarter 1999 Universal Service Contribution Factors, CC Docket 96-45, Public Notice, DA 99-1857 (rel. Sept 10, 1999) (*Proposed Fourth Quarter Contribution Factors*).

September 28, 1999, the court granted, in part, the Commission's motion for stay and ordered its July 30, 1999 mandate to take effect on November 1, 1999.⁵ In order to comply with the Fifth Circuit's decision, on October 8, 1999, the Commission eliminated intrastate revenues from the contribution base.⁶ The elimination of intrastate revenues from the contribution base reduces the contributions of incumbent local exchange carriers (LECs) to the universal service support mechanisms. To the extent an incumbent LEC recovers its universal service contributions in interstate access charges, an incumbent LEC is required to file tariffs reducing its access charges, correspondingly.⁷

2. On October 25, 1999, GTE Telephone Operating Company (GTOC) and GTE System Telephone Companies (GSTC) (GTE, collectively) filed transmittals (GTE's transmittals, collectively)⁸ in accordance with the Commission's *Fifth Circuit Implementation Order*.⁹ On October 28, 1999, AT&T and MCI filed petitions to suspend and investigate. Among other things, AT&T and MCI argue that GTE computed its USF obligation incorrectly because it computed its November and December obligation using the new contribution factor, but failed to annualize the contribution level for November and December.¹⁰

3. We find that this issue raised by AT&T and MCI in support of their petitions to suspend and investigate the transmittals filed by GTE raises substantial questions of lawfulness that warrant investigation of these tariffs. Accordingly, the transmittals filed by GTE Telephone Operating Companies and GTE System Telephone Companies are suspended for one day, following the effective date. We will identify specific issues for this investigation and establish a pleading cycle in a future designation order. In addition, GTE's transmittals are subject to accounting orders to facilitate any refunds that may later prove to be necessary.

4. Pursuant to Sections 1.200 and 1.1206 of the Commission's Rules, 47 C.F.R. §§

⁵ Texas Office of Public Utility Counsel v. FCC, No. 97-60421 (Sept. 28, 1999) (order granting, in part, Commission's motion for stay).

⁶ Federal-State Joint Board on Universal Service, Sixteenth Order on Reconsideration in CC Docket 96-45, Eighth Report and Order in CC Docket 96-45, Sixth Report and Order in CC Docket 96-262, (Rel. October 8, 1999) ¶¶15-18. (*Fifth Circuit Implementation Order*).

⁷ *Id.*

⁸ See GTE System Telephone Companies, Transmittal No. 296, FCC Tariff No. 1; GTE Telephone Operating Companies Transmittal No. 1225, FCC Tariff Nos. 1 & 2; GTE Telephone Operating Companies Transmittal No. 1226, FCC Tariff FCC No. 1.

⁹ *Fifth Circuit Implementation Order* at 15-18.

¹⁰ AT&T Petition to Suspend and Investigate at 8-9; MCI Petition to Suspend and Investigate at 3.

1.200 and 1.1206, this proceeding will be conducted as a permit- but-disclose proceeding in which ex parte communications are permitted subject to disclosure. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subject discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in 47 C.F.R. § 1.1206(b).

5. Accordingly, IT IS ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), and through the authority delegated pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91, 0.291, the tariff revisions contained in the transmittals filed by GTE Telephone Operating Companies and GTE System Telephone Companies ARE SUSPENDED for one day and an investigation IS INSTITUTED.

6. IT IS FURTHER ORDERED that, pursuant to Section 204(a) and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), 154(I) and through the authority delegated pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91, 0.291, GTE Telephone Operating Companies and GTE System Telephone Companies SHALL KEEP ACCURATE ACCOUNT of all amounts received that are associated with the rates that are subject of to this investigation.

7. IT IS FURTHER ORDERED that GTE Telephone Operating Companies and GTE System Telephone Companies SHALL FILE a supplement within five business days of the release date of this Order reflecting the one day suspension. GTE Telephone Operating Companies and GTE System Telephone Companies should cite the "DA" number of this Order as the authority for this filing.

8. IT IS FURTHER ORDERED that the petitions to suspend and investigate or to reject GTE System Telephone Companies and GTE Telephone Operating Companies Universal Service Fund Implementation Tariff Filings ARE GRANTED to the extent indicated herein and

otherwise ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink that reads "Jane E. Jackson". The signature is written in a cursive style with a large, looping initial "J".

Jane E. Jackson

Chief

Competitive Pricing Division

Common Carrier Bureau